

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of:

Brian KOHNE

Serial No.: 10/090,206

Filed: March 1, 2002

For: PERPENDICULAR VIEW THREE
DIMENSIONAL ELECTRONIC
PROGRAMMING GUIDE

Atty. Docket No.: 007287.00007

Group Art Unit: 2424

Examiner: Hossain, Farzana E.

Confirmation No.: 4670

REPLY BRIEF

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Sir:

This is a Reply Brief filed in response to the Examiner's Answer of mailing date July 17, 2009, and in support of Appellants' April 13, 2009, Notice of Appeal. This Reply Brief is **not** intended to serve as a substitute for Appellants' Appeal Brief filed April 13, 2009, but rather, as a supplement to the Appeal Brief in order to more fully clarify the issues for appeal.

Please charge any fees due, or credit any overpayments made, to our Deposit Account No. 19-0733. In addition, any extensions of time necessary for acceptance or entry of this paper are hereby requested.

Remarks

The Examiner's Answer contains illogical and legally erroneous positions.

The Answer begins addressing Appellants' arguments at page 11 by referring to Appellants' prior remarks regarding paragraphs [0003] and [0004] of Reynolds. The discussion at page 11 of the Answer merely describes what it is that Reynolds allegedly shows, and states that the Office considered paragraphs [0003] and [0004] of Reynolds as the reason why Reynolds' invention improved previous passive guide systems with an interactive guide system. The discussion at page 11 of the Answer concludes that any modification to the passive guide with interactive guide elements does not frustrate the intended purpose of Reynolds as Reynolds' purpose is to provide an interactive guide with passive guide elements.

Appellants disagree with the reasoning contained in the Answer at page 11. Reynolds at paragraphs [0003]-[0004] describes the frustration a user experiences with respect to passive guides due to being forced to wait until a list of program listings scrolls to display listings for a channel or time that a user is interested in. It is improper to suggest, as stated in the Answer at page 11, that *any* modification to the passive guide with interactive guide elements does not frustrate the intended purpose of Reynolds. Indeed, Reynolds' purpose is to provide a responsive, interactive guide. Modifying Reynolds to include features related to determining that a first broadcasted program is selected for at least a time greater than a predetermined threshold (and responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of an interactive programming guide) as recited in the independent claims runs counter to Reynolds' intended purpose of providing a responsive, interactive guide. As such, one of

ordinary skill in the art would not have had an apparent reason to modify Reynolds in the manner suggested by the Office. Thus, the rejections are improper.

At page 12 of the Answer, the Office contends that Appellants' statements regarding the standards used with respect to section 102 and 103 rejections is unclear and confusing.¹ Appellants offer the following remarks in an effort to clarify the discussion found at page 5 of the Appeal Brief. The Office's disregard of paragraphs [0003]-[0004] of Reynolds, and in particular, the portions of those paragraphs that teach away from the features recited in the independent claims effectively casts the alleged section 103 rejections in the mode of section 102 rejections. Stated in a slightly different way, the Office continues to focus on only those aspects of Reynolds that may serve to support (section 103) rejections, all the while continuing to ignore the portions of Reynolds that teach away from the claimed features.

As discussed at page 5 of the Appeal Brief, and in particular the provisions of the MPEP cited therein, the standard of a section 102 rejection allows the Office to disregard those portions of an applied reference that teach away from a claimed invention (so long as the claimed invention is disclosed in the applied reference), whereas those same portions of the applied reference must be taken into consideration when analyzing a claim for compliance with section 103. Appellants agree that the rejections appeared under a section 103 heading, but Appellants disagree with the standard the Office has seemingly applied in formulating the rejections. In effect, the Office has blended or conflated the standards used under sections 102 and 103 by continuing to disregard those aspects of paragraphs [0003] and [0004] of Reynolds that teach away from the features recited in the independent claims. Under a proper section 103 standard,

¹ See the Appeal Brief at page 5 and the Answer at page 12.

one of ordinary skill in the art would not have had an apparent reason to modify Reynolds in the manner suggested by the Office, given that Reynolds teaches away from such a modification. Yet, seemingly, the Office continues to express indifference to the fact that Reynolds teaches away from the features recited in the independent claims. It is, at least, on the basis of this indifference that the section 103 rejections are improper.

The discussion at page 13 of the Answer is not completely responsive to Appellants' remarks included in the Appeal Brief at page 6, but rather merely states what Reynolds allegedly discloses. At page 6 of the Appeal Brief, Appellants discussed how, even assuming (without admitting) that the passive guide of Reynolds could be construed as a background area, Reynolds still fails to teach or suggest displaying content selected in an interactive guide in the passive guide display screen. The passive guide of Reynolds is not changed based on what is selected in an interactive guide. Accordingly, Reynolds fails to teach or suggest all of the features recited in the independent claims.

Appellants understand that the Office is not relying on Rowe to disclose features related to overlapping selected content with information related to a first broadcasted program. See the Answer at page 13. With respect to Rowe, Appellants remarks at page 6 of the Appeal Brief were merely intended to clarify that Rowe fails to remedy the deficiencies of Reynolds discussed (immediately) above.

Conclusion

In view of the foregoing and for reasons set forth more fully in Appellants' Appeal Brief, reversal of the appealed rejections is respectfully requested.

Respectfully submitted,
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